

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Switching in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 01-02-024
(Filed February 21, 2001)

Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Loops in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 01-02-035
(Filed February 28, 2001)

Application of The Telephone Connection Local Services, LLC (U 5522 C) for the Commission to Reexamine the Recurring Costs and Prices of the DS-3 Entrance Facility Without Equipment in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-031
(Filed February 28, 2002)

Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Interoffice Transmission Facilities and Signaling Networks and Call-Related Databases in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-032
(Filed February 28, 2002)

Application of Pacific Bell Telephone Company (U 1001 C) for the Commission to Reexamine the Costs and Prices of the Expanded Interconnection Service Cross-Connect Network Element in the Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-034
(Filed February 28, 2002)

Application of XO California, Inc. (U 5553 C) for the Commission to Reexamine the Recurring Costs of DS1 and DS3 Unbundled Network Element Loops in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-03-002
(Filed March 1, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING THE MOTION OF PAC-WEST
TELECOMM, INC. TO TERMINATE STAY**

In September 2004, the Commission issued Decision (D.) 04-09-063 adopting permanent unbundled network element (UNE) rates for Pacific Bell Telephone Company, doing business as SBC California (SBC-CA), and ordering

SBC-CA to calculate any billing adjustments owed to or by interconnecting carriers for the difference between interim rates set earlier in D.02-05-042 and D.02-09-052 and the new permanent rates. At the same time, the Commission stayed the payment of these billing adjustments pending the outcome of further proceedings to consider payment options or other mitigations to lessen any negative effects of the true-up, and whether and how to implement any shared and common cost mark-up revisions along with the true-up. (D.04-09-063, Ordering Paragraph 4.)

In an October 18, 2004 ruling, I set a scope and schedule for the “true-up” phase of the above-captioned proceeding, in accordance with the Commission’s directive in D.04-09-063. The ruling set a brief schedule to address the various concerns voiced by SBC-CA and competitive local exchange carriers (CLCs) at a prehearing conference of October 13, 2004, wherein parties expressed their views of how the Commission should resolve disputes surrounding the true-up payments.

On the same day the ruling issued, Pac-West Telecomm, Inc. (Pac-West) filed a motion requesting immediate termination of the stay imposed by D.04-09-063, citing the continuing harm it suffers from the stay. According to Pac-West, it has suffered a reduction of its cash flows from interim rates that undercharged SBC-CA relative to the new final rates, and it will not be made whole until SBC-CA makes the true-up payments it owes Pac-West. At the same time, Pac-West states its competitors are advantaged by having enjoyed the benefit of interim rates paid to SBC-CA that are lower than the final rates. Pac-West alleges this causes it continuing harm in light of SBC-CA’s unwillingness to make true-up payments due to Pac-West as long as it is not receiving payment from AT&T Communications of California, Inc. (AT&T) and MCI, Inc. (MCI,

formerly WorldCom, Inc.). Therefore, Pac-West requests that the stay be lifted except with respect to payments by CLCs other than AT&T and MCI and that true-up payments by AT&T, MCI, and SBC-CA should be made no later than December 20, 2004.

SBC-CA filed comments in support of Pac-West's motion, maintaining that AT&T, MCI, and SBC-CA itself will not suffer financial hardship if they have to make true-up payments immediately. In addition, SBC-CA notes that issues surrounding the mark-up provide no basis to withhold payments while an order by the Ninth Circuit on this topic is under appeal. Finally, SBC-CA claims the current schedule goes beyond the intent of a limited stay and is unreasonable.

AT&T and MCI oppose Pac-West's motion.¹ AT&T objects that Pac-West is acting purely in its own self-interest by urging the Commission to force AT&T to pay SBC-CA immediately, regardless of the accuracy or legality of the amount SBC-CA demands and without examining the material differences between AT&T and SBC-CA regarding the amount of the true-up and resolution of mark-up issues. AT&T characterizes the situation as SBC-CA holding Pac-West hostage in order to extract an inflated payment from AT&T, and it suggests that there is no reason SBC-CA cannot pay Pac-West immediately, even if payment from AT&T is still pending. MCI claims Pac-West's motion is procedurally improper because it asks for modification of Ordering Paragraph 4 of D.04-09-063 and disregards the Commission's stated intent to consider true-up mitigations and common cost mark-up revisions.

¹ MCI's comments on Pac-West's motion were filed three days late. MCI's comments are accepted because no party is prejudiced by the late submittal.

While I sympathize with Pac-West's plight, I note that all carriers have been disadvantaged to some degree by the uncertainty caused by interim UNE rates and the inevitability of an unknown true-up payment. I will deny Pac-West's motion because the Commission very clearly ordered further proceedings to provide due process and an opportunity for all parties to be heard regarding potential true-up mitigations and common cost mark-up issues. After hearing the concerns of all parties, I set a relatively brief schedule to provide a fair opportunity for all parties to express their views. The current schedule provides for comments on November 19 and December 8, with a draft decision resolving true-up issues no later than February 1, 2005, and possibly sooner.

Pac-West is essentially requesting modification of D.04-09-063 to abandon further proceedings so that it can receive immediate payment. In filing its motion on the very same day that I issued a schedule for the true-up phase, Pac-West was perhaps unaware that the schedule ruling had just issued. It is not reasonable to abandon the short schedule set in the October 18th ruling simply because one carrier wants an even faster result that denies other parties the opportunity to plead their case. The schedule, as set forth in the October 18th ruling, provides due process to all parties, balances their various concerns, and is reasonable. I see no reason to amend it.

Therefore, **IT IS RULED** that Pac-West Telecomm, Inc.'s motion for immediate termination of stay is denied.

Dated November 22, 2004, at San Francisco, California.

/s/ DOROTHY J. DUDA

Dorothy J. Duda
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Denying the Motion of Pac-West Telecomm, Inc. to Terminate Stay on all parties of record in this proceeding or their attorneys of record.

Dated November 22, 2004, at San Francisco, California.

/s/ ERLINDA PULMANO

Erlinda A. Pulmano

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.